

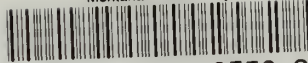
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LOCAL GOVERNMENT

1972

REPORT NO. 45
To the 43rd Legislative Assembly

MONTANA LEGISLATIVE COUNCIL
State Capitol
Helena, Montana



LOCAL GOVERNMENT

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PREFACE

When House Joint Resolution No. 38 was adopted during the 1971 Montana Legislative Session, the 56 counties, 126 incorporated municipalities and 209 special districts which comprise local government in Montana existed under the provisions set forth in Article XVI of the 1889 Montana Constitution. That document outlined the structures of the state's county and township governments, but dealt off-handedly with municipal government by stating merely that the legislature may provide ". . . for the appointment of such other county, township, precinct and municipal officers as public convenience may require" (Article XVI, Section 6). While dwelling at length on structure, the 1889 Constitution was silent as to what powers local government units may exercise.

In the absence of a constitutional statement on local government powers, Montana municipalities have derived their ability to govern from the state legislature and from the courts. Counties, on the other hand, have not enjoyed even the quasi-legislative powers afforded cities and towns, as they have traditionally been deemed to be merely administrative branches of state government. Both county and municipal government operations have been hampered by the long-held "Dillon's Rule," which holds that local governments possess only those powers expressly granted them in their state constitutions or by the legislature.

In viewing the adequacy of the 1889 Constitution to deal with local government problems in 1971, the Montana Constitutional Commission Research Subcommittee on Local Government found:

"An urgency for change in constitutional provisions and legislative procedures if local governments in Montana are to be able to freely use a variety of arrangements and devices to meet current and future local needs."

The Legislative Council in its 1968 report on the Montana Constitution also recommended that substantive changes were needed in the 1889 Constitution to allow local government units additional flexibility in their operations.

House Joint Resolution No. 38 directed the Legislative Council to ". . . study the feasibility and desirability of home rule for Montana's municipalities" Assessing this directive in light of the work then being done by the Constitutional Revision Commission, the Council attempted to identify legislative means of affording flexibility to local government units. Preliminary investigation revealed approximately 1300 sections of Montana law which restricted local government operations in areas ranging in importance from the licensing of pets to a limitation on municipal bonded indebtedness.

In order to review the maze of legislation in the local government

area, the Council developed a comprehensive questionnaire to be completed by all executive and legislative municipal officers in Montana. The questions posed to these officials were designed to identify which state laws, if any, were impeding the efficient operation of their respective units of government. In addition, officials were invited to submit their own ideas as to what specific legislative powers should be retained at the local level. Only 79 of the 750 officials contacted completed the questionnaire, the results of which are summarized in Exhibit 1. One general conclusion could be drawn from this inquiry, even though responses were incomplete, namely that much more flexibility is urgently needed to allow all classes of municipalities to deal effectively with local matters; however, some state aid and control is vital to administering service areas of statewide concern. This rhetoric was repeated in testimony given by city and county officials from all parts of the state representing both large and small government units.

At this point the Council concluded that any viable solution to the problem of reconciling state and local government powers lay with constitutional revision. Consequently, the Council's study group, composed of members of the House and Senate local government standing committees, met with the Constitutional Convention Local Government Committee to discuss the findings of its study and other matters of mutual concern.

As a result of the efforts of the 1971 Montana Constitutional Convention and its Local Government Committee, Article XI of the new Montana Constitution bears little resemblance to Article XVI of the old document. The new local government article completely reverses traditional concepts by granting chartered units of local government all powers not expressly prohibited by the constitution or the legislature. In addition, the new article mandates a citizen review of all forms of municipal government currently in force in Montana. The task of implementing Article XI of the new Montana Constitution poses a challenge to the legislative branch of Montana government. Over the next three years, the Montana legislature must develop a set of laws enabling all local governmental units to design and amend their own form of government. To do this, laws must be written restricting local initiative in areas deemed to be of statewide interest. Many other major and minor legislative responsibilities are listed in the body of this report.

The Council's sole recommendation is that the implementation of Article XI of the new Montana Constitution be given diligent consideration by both the 43rd and subsequent Montana Legislative Assemblies. The orderly adoption of major legislation made necessary by Article XI will require a great deal of legislative research and deliberation in order to adequately respond to the goals, objectives and problems of all local governmental units in Montana. The extension of legislative powers to Montana counties in itself requires a total assessment of the state's responsibilities to its political subdivisions.

The Council wishes to express its gratitude to Mr. Jerry Holloran, aide to the Constitutional Convention Local Government Committee, for his assistance in the preparation of this report. Mr. Holloran's analysis of the new local government article has afforded the Council and the Montana Legislature a unique opportunity to know the rationale behind this constitutional provision as viewed by its framers.

RECOMMENDATIONS

The Montana Legislative Council recommends the following schedule for researching and implementing Article XI of the new Montana Constitution:

-- *January 1973 through January 1975 -- Research leading to the drafting of legislation to implement:*

Section 3 -- Optional forms of city, county, town and city-county forms of government. (Passage as completed)

Section 5 -- Self-government charter-writing procedures.

Section 6 -- Limitations of charter-writing powers.

Section 9 -- Procedures by which each local government unit may study its government and submit alternatives.

-- *1973 Legislative Session -- Passage of legislation implementing:*

Section 1 -- Definition of "local government units."

Section 2 -- Bring county seat and boundary laws into agreement with constitutional provisions.

*Section 3 -- (a) Procedures for multi-county combination of offices.
(b) Revision of "traditional" form of county government.
(c) Provide for election of county commissioners at large or by district.*

Section 7 -- Revise Interlocal Co-operation Act to correspond with constitutional changes.

Section 8 -- Extend initiative and referendum powers to county residents.

-- *1975 Legislative Session -- Passage of legislation providing self-government charter-writing procedures and limitations thereon; passage of voter-review procedures. (Sections 5, 6, 9)*

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES REQUESTING THE LEGISLATIVE COUNCIL TO STUDY THE FEASIBILITY OF HOME RULE FOR MUNICIPALITIES AND TO MAKE RECOMMENDATIONS TO THE FORTY-THIRD LEGISLATIVE ASSEMBLY.

WHEREAS, there is an increasing tendency toward urbanization in the state of Montana; and

WHEREAS, the influx of people into Montana's municipalities has placed a strain upon the ability of the municipalities to provide necessary services to its residents; and

WHEREAS, the ability of the municipalities to cope with increasing problems is hampered in many cases by a lack of power to take timely action and is further hampered by an unwieldy system of government and a maze of statutes proscribing the activities and powers of the municipalities; and

WHEREAS, the concept of home rule would delegate general power to govern to the municipalities, except in areas specifically regulated or restricted by the legislative assembly; and

WHEREAS, the concept of home rule would allow municipal governments to cope with increasing demands against it.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council be requested to study the feasibility and desirability of home rule for Montana's municipalities and to make recommendations to the forty-third legislative assembly, and

BE IT FURTHER RESOLVED, that the secretary of state of Montana be instructed to send a copy of this resolution to the legislative council.

MONTANA CONSTITUTION OF 1972

ARTICLE XI

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.
- (b) A county has legislative, administrative, and other powers provided or implied by law.
- (c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

- (a) Initiated by petition in the local government unit or combination of units; or
- (b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
- (b) share the services of any officer or facilities with,
- (c) transfer or delegate any function, power, responsibility, or duty of any officer to

one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

IMPLEMENTING ARTICLE XI OF THE MONTANA CONSTITUTION OF 1972

INTRODUCTION

This section is an analysis of legislation which will be required to implement each of the nine sections of the new local government article. In some instances, legislation that will be possible, although not necessarily required, is also discussed. An attempt was made to focus on enumerating those local government areas that require some sort of legislative action, rather than on suggesting what form that action should take.

The major local government issues facing the legislature because of the new constitution can be categorized as follows:

Major duties: Subjects on which legislative action of major importance is required by the new document. In most cases, the local government article appears to allow two or three sessions to accomplish these major duties. Several of these subjects will require considerable study prior to final action by the full legislature.

Minor duties: Subjects on which legislative action of a less significant nature is required by the new constitution. Most of these minor duties probably could be completed during the 1973 session.

Discretionary duties: Subjects on which legislation is not required, but which are affected by some new language to or omission from the 1972 constitution.

The following summarizes the new Article XI in terms of those three types of duties.

MAJOR DUTIES

1. Provide additional alternative forms of government (Sections 3 and 9). (Appendix B and C)
2. Provide limitations on the power that may be exercised by those local governments adopting self-government charters (Section 6). Must be completed by July 1, 1975.
3. Provide procedures by which local units may prepare their own self-government charters (Section 5). Must be completed by July 1, 1975.
4. Provide a local government review procedure under which voters in each city and county will ballot on an alternative form of

government (Section 9). Must be completed by June 6, 1976.

MINOR DUTIES

1. Provide specific procedures for multi-county combination of offices (Section 3). (Appendix D)
2. Revise "traditional" form of county government to correspond with constitutional changes (Section 3). (Appendix B)
3. Bring county seat and county boundary laws into agreement with constitutional provisions (Section 2).
4. Extend initiative and referendum powers to county residents (Section 8). (Appendix A)
5. Provide statutorily for election of county commissioners at large or by district (Section 3). (Appendix B)
6. Revise present Interlocal Co-operation Act to correspond with constitutional changes (Section 7).
7. Miscellaneous statutory changes affecting local government, such as providing for election of justices of the peace by county, rather than by township.

DISCRETIONARY DUTIES

Because of new language in or omissions from the 1972 Constitution, the legislature may want to consider:

1. Programs of state assistance to local governments (omission of former prohibitory constitutional language).
2. Granting counties legislative power in certain areas (new Section 4).
3. Allowing county treasurers to succeed themselves (omission of former prohibitory constitutional language).
4. Enacting disincorporation method for cities with more than 500 population (new Section 3).
5. Revising present statutory debt limitations for

local governments (omission of constitutional debt limits).

6. Allowing salary increases during officials' terms of office (omission of former prohibitory constitutional language).

The remainder of this report is devoted to a section-by-section analysis of the major, minor and discretionary duties facing the Montana Legislature in the implementation of the new local government article. Legislation proposed by the Council for introduction in the 1973 legislative session is identified where applicable.

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Comments

Section 1 is an attempt to standardize terminology and thus simplify the rest of the local government article. There is no similar section in the 1889 Constitution which uses a wide variety of terms to describe local government units.

Section 1 confirms the legislature's present broad power to establish other local government units. Such units might include some multi-county or regional layer of government or certain types of special districts.

Legislative Action Required

For the sake of clarity, it may be advisable to add a statutory definition of "local government units." Such a definition would have to include counties and incorporated cities and towns; beyond that, it would include only those local government entities that the legislature wishes to have share in the powers given "local government units" under Article XI.

It would appear unlikely that the legislature would wish to have existing special districts (such as those created for water conservancy, cemetery operation, public hospitals and so forth) participate in the broad range of powers outlined for "local government units" in Article XI. (For example, if special districts are considered "local government units," they presumably would have to have initiative and referendum powers under Section 8, be provided with alternative forms of government under Section 3 and come under the special election provisions of Section 9.) Perhaps a statutory differentiation could be made by defining counties and incorporated cities and towns as "local government units" and special districts as "local government entities," a term used in Article VIII of the new constitution.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Comments

Section 2 combines the basic intent of Sections 1, 2 and 8 of the 1889 Constitution, with one basic change: the 1889 language (Sections 2 and 8) required approval of a majority of the qualified

electors of the county affected before a county boundary could be changed or a county seat transferred; the new Section 2 requires approval of a majority of those voting on the question in each county affected.

In addition, the new constitution eliminates language limiting frequency of election on county seat transfers (old Section 2) and requirements concerning debt and property division when a new county is established (old Section 3). Both subjects, however, continue to receive statutory attention (frequency of elections in Title 16, Chapter 3, and liabilities in Title 16, Chapters 5 and 40).

Legislative Action Required

Present laws should be revised to correspond with the new constitution. For example, the present "New County Act," passed in 1919, has vote requirements that appear to be contrary to the new constitution (Title 16, Chapter 5); similarly, the present law concerning removal of county seats (Title 16, Chapter 3) requires approval of a majority of the qualified electors of the county. It appears that both laws should be amended to correspond with the new constitutional requirement of "a majority of those voting on the question in each county affected."

On the other hand, the present law on abandonment (consolidation) of a county (Title 16, Chapter 40) appears already to meet the requirements of the new constitution and thus does not require amendment.

Deletion of constitutional language concerning division of liabilities when a new county is created would not appear to require any change in statutory law on the subject (see Title 16, Chapters 5 and 40).

In general, Section 2 of the new constitution seems to require only housekeeping amendment of present statutes.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of County Commissioners may

consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Comments

Section 3 combines provisions of Sections 4, 5, 6 and 7 of the 1889 Constitution. In its first paragraph, it directs the legislature to offer choices of government structure that local government units may adopt if they wish. The second paragraph requires that one of these choices must be the present "traditional" form of county government. Significantly, however, this "traditional" county government form is treated only as one "optional" form of county government -- not as the form which each county must have.

The second paragraph of Section 3 also provides that the enumerated offices within a county may be consolidated (as is now allowed under the old Section 5) and that two or more counties may establish a joint office (a new provision).

Deleted is 1889 constitutional language governing the establishment and adjustment of county commissioner districts (old Section 4); creating overlapping terms for commissioners (old Section 4); providing for filling vacancies in commissioner and other county offices (old Sections 4 and 5); specifying terms of office for county and city officials (old Sections 5 and 6); providing specific procedures by which offices within a county may be consolidated (old Section 5); and eliminating the previous constitutional prohibition against county treasurers succeeding themselves in office (old Section 5).

Although deleted from the constitution, some of these matters still receive statutory attention, as follows:

1. Providing for filling vacancies in county offices (Sections 16-2406 and 16-903).
2. Specifying terms of office for county and city officials (Sections 16-2406 and 16-901 [county] and 11-709 [cities]).
3. Providing specific procedures by which offices within a county may be consolidated (Section 16-2406).
4. Prohibiting county treasurers from succeeding themselves in office (Section 16-2406).

Most of these statutes simply repeat the wording of the 1889 Constitution. They remain valid under the new constitution--but no longer are required by it. In other words, the legislature may leave them as they are or change them at any time.

Legislative Action Required

Legislation required by Section 3 is of two types. The first type, somewhat "housekeeping" in nature, is needed to bring existing statutory law into compliance with the new constitution or to provide statutorily for items which previously received only constitutional attention. Included in this type of needed legislation are the following:

1. Title 16, Chapter 24, should be revised to reflect the fact that the "traditional" form of county government is an option that a county may operate under. (The present wording of Chapter 24 suggests that each county must operate under the traditional form, something that was not true even under the 1889 Constitution as amended.)
2. The offices of "county attorney" and "clerk of district court" should be added to the list in Section 16-2406 because these offices now are eligible for inner-county and multi-county consolidation under Section 3 of the new constitution. In addition, the legislature may want to revise the specific statutory procedure by which offices within a county may be consolidated (Section 16-2406).
3. Legislation should be enacted providing specific procedures by which two or more counties may establish a joint office, as authorized in Section 3 of the new constitution.
4. Consideration should be given to whether to retain the statutory prohibition (Section 16-2406) against county treasurers succeeding themselves in office. The new constitution does not require such a prohibition, but appears to allow it.
5. Statutory provision must be made for the terms and election of county commissioners. Present law (Section 16-901) provides for six-year terms and further states (Section 16-2407) that the terms and election of county commissioners "are provided for in the constitution"; that no longer is the case under the new constitution. (Appendix B)

In short, the constitution no longer requires that commissioners serve six-year overlapping terms or that each county must be divided into three commissioner districts. The terms, method of election (at large or by district) and questions such as residency qualifications now must be specified by the legislature.

Other legislation required--or at least strongly suggested--by Section 3 is of considerably more importance than simple "housekeeping" measures and is needed to carry out the intent of the

section's first paragraph. That paragraph contains two main directives to the legislature.

First, the legislature is directed to provide for procedures of incorporating, classifying, and dissolving local government units and altering their boundaries. In general, such procedures are provided for already. Title 11, Chapter 2, provides procedures for municipal incorporation. Chapters 2 and 3 and several other specific statutes provide for classification of cities and towns and Section 16-2419 provides for county classification; Sections 11-306 and 11-307 provide for disincorporation of towns with less than 500 population and Title 16, Chapter 40, provides for abandonment of counties. Chapters 4 and 5 of Title 11 concern municipal annexation.

In general, it appears that present state law fulfills the new constitutional requirement for procedures of incorporating, classifying, and dissolving local government units and of altering their boundaries; those procedures, of course, still may be changed from time to time, just as they have been in years past. More specifically, the Constitutional Convention's Local Government Committee appeared to believe that a statutory method should be provided for the disincorporation of cities and towns with more than 500 residents.

Second, the requirement in Section 3 that the legislature provide alternative and optional forms of local government takes on an element of urgency when considered along with Section 9 of the new constitution. The latter section requires that each city, town and county in the state vote on whether to retain its present form of government or adopt some alternative form.

The mechanics required by Section 9 are discussed below; it is sufficient to note here that Section 9 gives additional reason for a speedy implementation of Section 3. To a certain extent, of course, the section already is implemented. Montana law now provides three alternative forms of city government (mayor-council, used in 124 of the state's 126 cities and towns; commission; and commission-manager, used in Helena and Bozeman and now being considered in Great Falls). Two forms of county government are offered (the traditional form, used in 55 counties, and county manager, used only in Petroleum County); one general form of city-county consolidation is authorized by Montana law.

The Constitutional Convention obviously did not believe this choice of alternatives sufficient. The Convention's Local Government Report states: "It is hoped that Section 3's straightforward direction to the legislature to provide optional and alternative forms of government will result in a greatly expanded offering to the local government units in Montana."

There is no limit to the number of alternative or optional forms of government the legislature could make available under Section 3. The following four general types of municipal government used nationally are examples of what could be done:

1. Council-Manager Form
2. Strong Mayor Form
3. Commission Form
4. Weak Mayor Form

Table 1 shows the extent to which each of the above forms has been used in American cities in 1938, 1950 and 1967.

TABLE 1

FORMS OF GOVERNMENT OF AMERICAN CITIES
(Over 5,000 Population)¹

Form of Government	Number of Cities			Percentage of Total		
	1938	1950	1967	1938	1950	1967
Mayor-council ²	1,161	1,163	1,513	67.5	59.3	50.6
Commission	268	302	190	15.6	15.4	6.4
Council-manager	292	495	1,283 ³	16.9	25.3	43.0
Totals	1,721	1,960	2,986	100.0	100.0	100.0

¹Not included in this table are 89 places with town meeting government, and 38 with representative town meeting government.

²Including both strong and weak mayor cities, since there is no standard classification by which separate lists can be compiled.

³Approximately 614 communities below 5,000 population also have the council-manager plan.

Of the four general types of municipal government, Montana law presently authorizes the council-manager, commission and mayor-council forms. The mayor-council form, as prescribed by Montana law, represents a compromise between the weak and strong mayor forms of government. For example, while the mayor has line-item veto power over municipal budgets, he is not solely responsible for the preparation of the budget, nor can he hire and fire his administrative officers without the consent of the council. Under a true strong mayor form of government, the mayor is the sole administrative officer of a city or town.

The weak mayor form has proven to be an inadequate type of municipal structure, as evidenced by its discontinuance in many cities over the past twenty years. This form was most popular during the nineteenth century, when it was commonly held that democracy was best served by electing as many officials as possible in order to avoid the placement of power in the hands of a few.

In light of the above, the Council feels that the provisions of Section 3 would be best implemented by retaining the three present types of city and town government which have proven to be popular nationally. In addition, it might be possible to devise a particularly streamlined form of municipal government for those incorporated towns with less than 1,000 population (there were 68 such towns in 1970); perhaps a "strong mayor" form of mayor-council government could be added for the larger cities. (Appendix C)

County government: The present "traditional" and county manager forms could be retained. In addition, numerous "in-between" variations could be added. For example, one form could provide for three commissioners and perhaps two other elected officials; another might provide for an elected county executive along with the present board of commissioners. (Appendix B)

City-county consolidated government: The present consolidation law provides for a merged city and county government to be run primarily by officials appointed by a manager, who, in turn, is appointed by elected commissioners. Optional forms of such a consolidated government could be offered, providing, for example, for an elected executive rather than an appointed manager. The new constitution does not limit the forms the options may take; however, it does provide that none may go into effect without approval of the local voters.

One change in wording in the new constitution should be noted. The new Section 3, unlike its predecessors in the 1889 Constitution, specifically directs the legislature to allow local government units to amend the optional forms of government. The optional forms now authorized by statute include no such amendment procedures. Convention records indicate that delegates believed that allowing local voters to amend the options would result in local governments being tailored to local needs. For example, the local voters might want to amend the present mayor-council government form to provide for an elected, rather than an appointed, city clerk. (Subject Code 31-59-00 in the Advisory Commission on Intergovernmental Relations' State Legislative Program might be adapted to provide the local amendatory power foreseen under Section 3 of the 1972 Constitution.)

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.*
- (b) A county has legislative, administrative, and other powers provided or implied by law.*
- (c) Other local government units have powers provided by law.*

(2) *The powers of incorporated cities and towns and counties shall be liberally construed.*

Comments

Section 4 has no counterpart in the 1889 Constitution. Its major thrust is simply to embody the "Dillon Rule" of judicial interpretation, which holds that local government units have only that power the legislature grants them. In other words, Section 4 basically writes into the constitution the existing legal status of Montana cities, towns and counties.

Three items in Section 4 are worthy of special note:

1. Subsection (1)(b) allows the legislature to give legislative power in counties, something the court has ruled it cannot do under the present constitution.
2. Section 4 directs the court to "liberally" construe the power of counties, cities and towns.
3. Perhaps most important, Section 4 does not apply to local units exercising self-government powers under Section 6.

Legislative Action Required

Section 4 requires no implementing legislation. Present laws giving certain powers to cities, towns, counties and special districts are given continued constitutional sanction by this section.

In effect, the provisions of this section already are written into statutory law. See, for example, Section 16-801, which states that every county "has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed." Similarly, Section 11-101 states: "A city or town is a body politic and corporate, with the general powers of a corporation, and the power specified or necessarily implied in this chapter, or in special laws heretofore enacted."

However, the new constitutional section should give the legislature more leeway in providing for county government. In the past, the court has struck down Montana planning and zoning legislation and laws authorizing county and district health boards as unconstitutional delegations of legislative powers to counties. To avoid this pitfall, the new constitution specifically authorizes the legislature to provide counties with legislative power. However, it does not require that this be done.

In summary, Section 4 basically continues the present legal status of Montana cities, towns and counties. It requires no implementing legislation; however, it does appear to broaden the type of power that the legislature may authorize county governments to exercise.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Comments

Under the 1889 Constitution, only the legislature could devise forms of local government, which then are submitted to local voters for their approval or rejection. Section 3 of the new constitution reaffirms the power of the legislature to provide such alternative forms of government. Section 5 goes a step further--it authorizes local residents to design their own forms of local government if they wish. Such local charter writing already is authorized in more than half the states.

Section 5 provides that the procedures by which the local charter can be prepared, voted on and revised must be provided by the legislature by July 1, 1975. If the legislature should fail to act, a city or county, by election, could establish its own charter procedures. That provision obviously is designed as a whip to force the legislature to act by the 1975 date.

In establishing procedures for local charter writing, the legislature is prohibited from requiring the submission of proposed self-government charters to a legislative body for approval. In other words, the legislature cannot require that a city charter drafted in Great Falls must receive approval of the Great Falls City Council or the state legislature before it goes into effect.

On the other hand, the wording of Section 5--and convention records--clearly indicate that in setting up procedures for local charter drafting, the legislature may limit those local units that may exercise the power. Thus, the legislature could specify that only local units or combinations of units with more than 10,000 population could draft their own charters. Similar limitations are imposed in most other states that authorize local charter writing.

Subsection (3) of Section 5 provides that charter provisions on a local unit's executive, legislative and administrative structure will supersede statutory provisions. In other words, if a locally written charter calls for the City of Billings to elect a city treasurer but state law calls for an appointed city treasurer, the local charter provision calling for election will govern.

Legislative Action Required

Section 5 gives the legislature until July 1, 1975, to provide a procedure by which local units may write their own charters. Examples of such procedures are available from the other states that allow local charter writing and from national research organizations.

In general, the legislature probably will want to consider the following factors in providing a procedure for local charter writing:

1. A decision on whether all or just some cities and counties will be allowed to participate in local charter writing.

As noted above, many states require a certain minimum population before a local unit may write its own charter. Such limits apparently are based on the theory that a small city or county lacks the resources to do a proper job of charter writing or to exercise the increased independence that charter writing allows.

In Montana, for example, the legislature could state that local charter writing will be available only to those cities or counties which individually or in combination have populations of more than 50,000. That, in effect, would limit local charter writing to the cities of Great Falls and Billings, the counties of Missoula, Cascade and Yellowstone and city-county combinations within those three counties.

Testimony before the convention indicated that at present, there is little interest in local charter writing in Montana. The one exception, according

to convention records, is in Missoula. However, recent discussion in Great Falls suggests that area also might now be interested in local charter writing.

2. A method by which a local government unit may implement local charter writing. In most states, law requires that a local election be held before a local unit embarks on charter writing. The question submitted could be in this form: "Shall a commission be chosen to frame a charter for the county [or city] of _____?" The election usually is called by ordinance of a local government legislative body (such as a city council) or by petition of local residents.
3. Determinations concerning the charter commission itself. How many members should there be? Should they be chosen by election? If so, should they be nominated by petition or by primary? Should they run on party or nonpartisan tickets? How long should the commission have to draft the charter? How will it organize itself? How will it get necessary operating funds?
4. Provisions for the adoption or rejection of the completed charter. When should the completed charter be submitted for approval or rejection? What majority should be required for approval? In addition, some states provide for transition once a charter is adopted; others restrict the frequency with which the call for a charter commission may be placed before the voters.
5. Provisions by which a locally drafted charter, once adopted, can be amended or repealed. If the legislature fulfills the constitution's direction and provides local charter writing procedures by 1975, the provisions of subsection (2) of Section 5, in effect, will become inoperative.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in Section 3.

Comments

Section 6 represents perhaps the major departure of the new constitution from the 1889 document. The section must be considered along with Section 4; together, they create a two-level system of local government power:

1. Most cities and counties in the state probably will operate under Section 4, "General Powers." Under this section, the local units will continue their present status, being able to do only those things that the legislature has said they may do. As noted earlier, Section 4 of the new constitution is already implemented; it is the system of local-state relations that has existed since Montana became a state.
2. Those cities or counties which adopt self-government charters will operate under Section 6, rather than Section 4. Section 6 provides that units adopting self-government charters may exercise any powers except those prohibited by the constitution, by state law or by the charter itself. In effect, Section 6 provides a form of what generally is known as "home rule."

The dual effects of the two sections are indicated in the following example. Suppose there are two Montana cities--City "A" does not have a self-government charter but City "B" does. Suppose further that both cities want to operate an off-street parking facility.

City "A," proceeding under Section 4 of the constitution, will be able to do nothing unless the legislature has enacted a law giving cities the authority to operate an off-street parking facility. If such a law has been passed, City "A" can do only what the law states or implies as to the setting up of a parking facility. In short, City "A" has only the power that the legislature has granted it.

On the other hand, City "B" has a self-government charter and operates under Section 6. Therefore, it can set up and operate a parking facility in any way it wishes--even in the absence of legislative authorization for cities to run such facilities. The only limitations on the power of City "B" to run a parking facility will be the state constitution, the city's own charter and laws passed by the legislature. For example, the legislature could pass a law prohibiting self-government cities from operating parking facilities, or saying that money gained from such facilities can be used for no purpose other than traffic control. But City "B" may exercise any powers except those prohibited by the constitution, its charter or the legislature.

Legislative Action Required

Theoretically, Section 6 requires no legislative action. In the absence of such action, a self-government city could simply do whatever it wished.

From a practical standpoint, however, the legislature undoubtedly will want to prohibit self-government units from exercising certain powers. For example, the legislature might want to

prohibit them from defining and providing for the punishment of felonies, from levying certain taxes or from passing certain civil laws.

The extent to which legislative prohibitions are necessary will depend partly on a determination of what status present local government laws will have on self-government cities and counties. Those laws now are stated in terms of grants of power to local governments; but under Section 6 of the constitution, some of them also might be interpreted as limits or prohibition on the power of self-government units.

Here is a case in point. Present Montana law (Section 84-4701.1) grants cities and towns authority to levy an all-purpose levy which "shall not exceed sixty-five (65) mills on the dollar." Can that grant of power also be interpreted as a prohibition against any self-government city levying more than 65 mills?

The legislature will be able to look to other states for aid in answering such questions. Alaska and Pennsylvania have almost identical constitutional provisions and presumably have passed laws to regulate the self-government units in their states. Clearly, however, proper implementation of Section 6 also will require careful study in at least two areas:

1. A determination of what legislative form prohibition or limitation of local self-government powers should take.
2. A determination of the subject areas (taxation, zoning, police protection, personnel powers, etc.) in which local self-government powers should be circumscribed by the legislature.

Such a study should be completed--and implemented--before the first self-government charter goes into effect. And the first charter can go into effect as soon as the legislature provides charter writing procedures (see Section 5) or, at the latest, July 1, 1975.

Section 6 also provides that the legislature, if it wishes, may extend the self-government powers to other units of government by including it in one or more of the optional forms authorized in Section 3. The legislature is not required to do so, however.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,*
- (b) share the services of any officer or facilities with,*

(c) *transfer or delegate any function, power, responsibility, or duty of any officer to*

one or more other local government units, school districts, the state, or the United States.

Comments

Section 7 is an extremely broad grant of intergovernmental co-operation power to local government units. It is similar to Section 6 in that the legislature is put in the position in the future of limiting a local unit's power to act. Section 7 says, in essence, that a local government unit can cooperate with other units in virtually any manner unless the legislature or the local charter says no.

Legislative Action Required

Since 1967, Montana has had a rather broad "Interlocal Co-operation Act" on the books (Title 16, Chapter 49). That law, however, is written as a grant of power to local units. Section 7, as noted above, now puts the legislature in the position of limiting, rather than granting, cooperation power.

For the sake of clarity, the legislature may wish to revise the present "Interlocal Co-operation Act" to conform with the wording of the new constitutional section and to prohibit any forms of cooperation it may believe undesirable.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Comments

Section 8 requires that the legislature provide for the initiative and referendum in local government units. Such provision already is made for town and city (Title 11, Chapter 11) and city-county consolidated governments (Title 11, Chapter 34). No broad initiative or referendum power exists at the county level, probably in part because of the extremely limited ordinance-making power of counties in the past.

Legislative Action Required

Action is required extending the powers of initiative and referendum to the county level. The fact that counties in the future may be exercising increasing ordinance-making power (under Sections 4 and 6) suggests that the initiative and referendum may be helpful

tools on the county level. (Appendix A)

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

Comments

Section 9 represents the most unique feature of the new local government article and perhaps of the entire constitution. It has no counterpart in any other state constitution; therefore, there is no example to follow in implementing the section.

Basically, the section requires that electors in every town, city and county in the state must vote within the next few years to either continue their present form of government or adopt an alternative form. Convention records indicate that the thought behind the section is that the mandated elections, at the least, will force people to closely examine their local governments and perhaps will result in major improvements in Montana local government.

Legislative Action Required

Implementation of the section will require careful timing and interpretation. The section appears to pose two major tasks for the legislature:

1. The legislature, by June 6, 1976 ("within four years of the ratification of the constitution"), must provide a procedure requiring each town, city and county to review its present government structure and to submit an alternative form of government to the voters for ratification.

One of the main decisions the legislature will have to make is how to determine what alternative form of government will be listed on which ballots. Should the legislature itself make the determination directly? For example, that all cities of less than 1,000 will vote on the commission form of government and all cities of more than 1,000 (except Bozeman and Helena) on the city manager form? Or should the legislature provide that the decision on which alternative to place on the ballot should be made locally? Section 9 appears to support such a local decision;

it states that each local government unit shall be required ". . . to review its structure and submit one alternative form"

2. In order that the section may be implemented, the legislature must provide alternative forms of government from which each local unit can select one to put on the ballot. The legislature is directed to provide such alternative forms under Section 3 regardless; Section 9 simply makes legislative action more urgent.

The types of alternative forms that the legislature can provide are discussed under Section 3 above. Consideration also might be given to whether the language of Section 9 would allow disincorporation as an "alternative form of government" to be voted upon. For the many Montana towns with less than 1,000 population, disincorporation might offer the only meaningful alternative to their present government.

The wording of Section 9 makes careful planning and timing mandatory in implementing the two-fold task. Particularly noteworthy is the requirement that once the legislature provides the procedure, the votes in each city and county must be conducted at the "next general or special election." Thus, if the legislature were to provide a procedure during its 1973 or 1974 sessions, the vote--barring a special election--would be at the general election in 1974. If, on the other hand, the legislature waits until its 1975 or 1976 session to provide the procedure, the vote presumably will come in November, 1976. (The assumption is made that the term "general election" used in Section 9 means the statewide general election held in even-numbered years in November, not regularly scheduled city elections.)

The Council recommends the following timetable for legislative implementation of Section 9:

1973, 1974, 1975 legislative sessions:	Study and passage of alternative or optional forms of city, county and city-county forms of government.
1975 legislative session:	Passage of legislation providing procedure for each local government unit to study its government and to submit an alternative.
General Election Day, November, 1976:	Separate votes in every city and county in the state on whether to adopt an alternative form of government.

This schedule offers the following advantages:

1. It meets the constitutional requirements of Section 9.
2. It allows the legislature three sessions (1973, 1974 and 1975) to devise various optional or alternative forms of city and county government and also enough time to carefully devise a procedure for the voter review election.
3. It allows the local voters the maximum amount of time possible under Section 9 to study their present government form and decide on an alternative.

Section 9 also requires that the legislature require a local government review at ten-year intervals. Such a review could take a variety of forms; it could be patterned after the first review as detailed in Section 9 or it could be entirely different. At any rate, there is no urgency to immediately provide what the procedure will be for the year 1986.

Subject Code 31-59-00 in the Advisory Commission on Intergovernmental Relations, State Legislative Program might be helpful in implementing Section 9.

OTHER CONSTITUTIONAL PROVISIONS AFFECTING LOCAL GOVERNMENT

Provisions of the new constitution outside of Article XI also affect local government. The following are among the major changes.

Local Government Debt. Section 10 of Article VIII of the new constitution directs the legislature to limit local government debt by law. The present debt limitations are eliminated from the constitution.

However, those present constitutional debt limitations also are incorporated in statutory law. Section 16-807 limits county indebtedness to five percent of the value of taxable property and requires a vote on any single-purpose debt exceeding \$10,000. Section 11-966 similarly gives statutory recognition to the present constitutional debt limits on cities and towns.

The new constitution would allow the legislature to change these limits. In the alternative, the legislature could leave the debt limits at their present statutory rate, the same rate mandated by the 1889 Constitution.

State Aid to Local Government. The new constitution removes roadblocks to state aid to local governments. Omitted from the

new document is the wording of Article XII, Section 4, of the 1889 Constitution:

The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town or municipal corporation for county, town, or municipal purposes

In addition, the new constitution clearly authorizes the use of highway revenue for city and county road projects (see new Article VIII, Section 6) and deletes language that appeared to earmark state income tax money for the public schools and state government (old Article XII, Section 1a).

Constitutional Limitations on Salaries. The 1889 Constitution (Article V, Section 31) prohibited county officials from receiving pay increases during their terms of office. The result has been an "unequal pay for equal work" situation, particularly with regard to county commissioners who serve six-year, overlapping terms. For example, a commissioner in a first-class county elected in 1966 is receiving \$5,600 a year; a second commissioner in the same county elected in 1968 is receiving \$6,500 because the legislature raised the pay in 1967; the third commissioner in the county, elected in 1970, is receiving \$8,000 because the 1969 legislature raised the pay again.

Although the constitutional basis for this situation is not included in the new constitution, statutory law continues to prohibit pay raises during a term of office (see Section 16-912 for county commissioners, Section 25-609 for other county officials and Section 11-732 for city officials). If the legislature wishes to delete the salary prohibition, it now may do so.

County Office Location. The provision in the 1889 Constitution (Article XIX, Section 6) requiring that all county officers must keep their offices at the county seat was omitted from the new constitution. However, the requirement remains a part of statutory law (see Section 16-2413).

Townships. All references to townships as a governmental unit were deleted from the new constitution. Justices of the peace now are to be elected on a county, rather than township basis (see new Article VII, Section 5). Statutory law should be revised to conform with this change and possibly to eliminate all mention of the township as a governmental unit.

EXHIBIT 1

LOCAL GOVERNMENT SURVEY

The following is a summary of the results of the local government survey conducted by the Council in conjunction with this study. Of the 750 questionnaires mailed to all Montana mayors and aldermen, only 79, or 11% were returned to the Council offices. An 11% return, while far from adequate for analytical purposes, was found to contain some significant features. The purpose of this summary is to point out some of the salient areas which received the attention of at least 50% of the respondents and could, therefore, be considered somewhat representative of the whole.

The objective responses to questions appearing in the questionnaire are presented together for all officials and classes of municipality in order to obtain the greatest possible number of answers in each category. A breakdown of forms received is as follows:

	1st Class		2nd Class		3rd	Town	Totals
	<u>25,000+</u>	<u>10-25,000</u>	<u>7,500-10,000</u>	<u>5,000-7,500</u>	<u>Class</u>		
Mayors	2	2	2	3	0	13	22
Aldermen	<u>8</u>	<u>11</u>	<u>3</u>	<u>12</u>	<u>5</u>	<u>18</u>	<u>57</u>
Totals	10	13	5	15	5	31	79

Three related questions were designed to identify service areas which were felt to be purely local in nature and those which were felt to require some sort of county or state partnership. The three questions all involved an assessment of 23 service areas which were listed on the form. The charter-writing provisions in the new constitution require that such shared powers be defined, so as to lessen the possibility of future litigation through the courts.

Question 1 asked for an assessment of the current Montana codes relating to municipal services. Using the present statutes as a standard, officials were asked to rank the service areas listed as to whether a greater or lesser degree of legislation was needed for each.

Those service areas felt to be "under legislated" under current laws were:

1. Air and Water Pollution Control (59%)
2. Civil Defense (58%)
3. Planning for Water and Sewer Facilities (56%)

- | | |
|---|-------|
| 4. Driver Improvement | (50%) |
| 5. Construction of Water and Sewer Plants | (43%) |
| 6. Waste Collection and Disposal | (43%) |
| 7. Juvenile Delinquency | (37%) |

It is perhaps erroneous to assume a need for additional statutory controls in the above areas. In responding to the question as stated, officials may have felt a need for a realignment of statutory responsibilities, a clarification or amplification of pertinent codes, or even a shifting of responsibility to the federal level. Consideration must also be given to the fact that the respondents were not given the opportunity to express their views on the necessity of any state legislation in the service areas listed.

Those areas which were considered to be "over legislated" were:

- | | |
|--|-------|
| 1. Annexation of Unincorporated Areas | (41%) |
| 2. City Planning and Zoning | (39%) |
| 3. Parks, Playgrounds and Golf Courses | (38%) |

Perhaps the most notable aspect of the response to this question was that the "status quo" or "same degree" choice received the most attention in most of the service areas listed. While the services shown in the questionnaire were not all-inclusive, they did represent the majority of services provided by 90% of all incorporated places in Montana. More than one respondent implied that while he felt that a service should be provided by his local government unit, he recognized that the tax base of his incorporated area would not support more than high-priority services such as sewer and water. Fiscal capacity to perform was no doubt a factor affecting all objective questions in the questionnaire.

Question 2 expanded on the statutory aspects of question 1, and asked that the respondents indicate their opinions on how the service areas would best be administered (i.e., whether the governmental problem for which the service was provided was of statewide, local, or mutual concern).

The distribution of responsibilities indicated, by order of importance, were as follows:

Statewide Issues

- | | |
|-----------------------|-------|
| 1. Driver Improvement | (46%) |
| 2. Civil Defense | (45%) |

Local Issues

- | | |
|---|-------|
| 1. Annexation of Unincorporated Areas | (73%) |
| 2. Parks, Playgrounds, and Golf Courses | (70%) |
| 3. City Planning and Zoning | (66%) |
| 4. Ambulance Services | (53%) |
| 5. Jails | (47%) |
| 6. Municipal Court System | (44%) |

Joint Concerns Requiring Some State Administration

1. Public Safety (Police and Fire Protection)	(67%)
2. Planning for Water and Sewer Facilities	(59%)
3. Construction of Water and Sewer Plants	(59%)
4. Airports	(59%)
5. Juvenile Delinquency	(57%)
6. Art Galleries, Libraries and Museums	(55%)
7. Licensing and Regulation of Alcoholic Beverage Dispensers	(53%)
8. Air and Water Pollution Control	(52%)
9. Land Improvement and Reclamation	(48%)
10. Bridges	(46%)
11. Waste Collection and Disposal	(46%)
12. Industrial Development	(44%)
13. Licensing and Regulation of Business and Professions	(40%)

Even though many of the items listed above did not receive enough of a majority selection to be considered significant, the response to this question was nevertheless surprising in that most of the services were felt to require a state-local partnership for their administration. This is in conflict with other sections of the questionnaire which indicated a strong desire on the part of local officials to "control their own affairs." However, as in question 1, the municipality's fiscal resources or ability to provide services may have played an important role in how individual officials responded to the question as stated. Other significant points to be noted from the question are:

1. Local law enforcement services, including the adjudication of matters before lower courts, was felt to be of local concern, while other public safety matters, such as civil defense, driver education, and the enforcement of state liquor laws, were felt to require some state help.
2. The fact that police and fire protection were considered to be of mutual state-local concern may well be a reflection of the increasingly untenable burden these services place upon the general funds of all Montana cities and towns. This problem has received a great deal of attention during recent state legislative sessions.

Question 3 asked that respondents evaluate each service area as to whether it would best be administered at the county level, municipal level, or through a city-county interlocal agreement. As in previous questions, the results pose more questions than they answer. For example, while most services listed were felt to be best administered under some sort of city-county sharing agreement, the items best representative of the advantages of consolidation (i.e., planning, zoning and annexation) continued to be reserved to city or town jurisdiction. Respondents may have felt that periodic contractual relationships with county

governments to solve mutual problems were superior to a more permanent structural consolidation.

It is also odd that counties were rejected as the preferable administrative area for the licensing and regulation of businesses and professions. This point causes more confusion in light of the fact that such regulation was felt to require some state control in previous questions. This same preference holds true for all facets of utilities planning, but is more understandable in the face of recent city-county controversies over the subject of extending sewer and water facilities to unincorporated areas.

Generally, areas which were considered to be most easily shared were those which have been developed over past legislative sessions after being recognized as more effectively administered on a city-county basis. These areas would include:

1. City-county airports
2. City-county jails
3. City-county landfill dumps
4. City-county hospital and nursing care facilities
5. Countywide civil defense facilities

City-county planning boards were notable by their absence from the above list.

Another section of the questionnaire contained opinion statements designed to identify the degree to which municipalities desire autonomy over local affairs, including what major governmental responsibilities they felt qualified to assume. The response to this section provided the sharpest contrast in opinion, evidenced by a less than 5% choice of the "no opinion" alternative. The division of "agree" and "disagree" choices were evenly distributed and separated by significant percentage deviations.

Positive home rule statements were answered in the affirmative by an average of 81%. From the responses, it could be said that city officials, regardless of the size of their respective units, felt that all incorporated cities or towns should be eligible for some degree of home rule. Positive answers to other questions underscored the fact that local officials desired more legislative powers in local affairs and would prefer to have such an allocation of powers defined in some way, such as through the constitution. Ninety-two percent of all respondents agreed that the responsibility for action or inaction in meeting local problems should be placed with the local governing body.

Other questions in this section attempted to further isolate issues which respondents felt should be controlled by the state in order to provide uniformity among the various governmental units. A substantial number disagreed that the state legislature should control municipal debt limits (58%), but agreed that the state has a responsibility to set uniform, statewide limits on property tax levies (64%). The question of municipal debt limits was discussed in depth in hearings before the Council, and

witnesses generally agreed that while the constitutional limitation on indebtedness had not caused problems for Montana cities, the statutory limit on municipal bond interest rates was a source of major frustration to local officials.

Respondents seemed evenly divided on a question as to whether or not the state legislature should prescribe the types of revenue available to cities.

Responses to other sections of the local government survey, not mentioned above, were inconclusive for reporting purposes. A detailed breakdown of survey returns will be made available to any legislator on request.

APPENDIX A

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE POWERS OF INITIATIVE AND REFERENDUM TO THE COUNTIES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen percent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Such petition shall be filed with the county clerk. It shall be the duty of the county clerk to present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act.

(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The procedure for judicial review shall be the same as that provided for the cities in Section 11-1104 (4) and (5).

(3) If a resolution shall be repealed pursuant to a proposal initiated by the legal voters of a county as in this section provided, the board of commissioners may not, within a period of two (2) years thereafter, reenact such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the council enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether such new resolution be a reenactment without material change of the one so repealed, and the provisions of subsections (2) and (3) of Section 11-1104 hereof shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent

exercise of the initiative herein provided for, at any time, to procure a reenactment of a resolution repealed pursuant to initiative of the voters.

Section 2. Any resolution proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the county, unless the petition therefor shall ask that the same be submitted at a special election, and such petition be signed by not less than fifteen percent (15%) of the electors qualified to vote at the last preceding county election.

Section 3. No resolution passed by the board of county commissioners shall become effective until thirty (30) days after its passage, except general appropriation resolutions providing for the ordinary and current expenses of the county, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds (2/3) vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

Section 4. During the thirty (30) days following the passage of any resolution, ten percent (10%) of the qualified electors of the county may, by petition addressed to the board and filed with the county clerk, demand that such resolution, or any part or parts thereof, shall be submitted to the electors of the county.

Section 5. Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next county election; provided, the petition or petitions shall have been filed with the county clerk at least thirty (30) days before such election. If such petition or petitions be signed by not less than fifteen percent (15%) of the qualified electors of the county, the measure shall be submitted at a special election to be held for the purpose.

Section 6. The board of county commissioners may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any resolution passed by the board and may likewise submit to the electors, at a general election, any resolution passed by the board.

Section 7. Whenever a measure is ready for submission to the electors, the clerk of the county shall, in writing, notify the board, who shall issue a proclamation setting forth the measure and the date of the election. Said proclamation shall be published four (4) days in four (4) consecutive weeks in each daily newspaper in the county, if there be such, otherwise in the weekly newspaper published in the county. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the county.

Section 8. The question to be balloted upon by the electors

shall be printed on the initiative or referendum ballot, and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed, and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed, and returned. The returns for the questions submitted by the voters of the county shall be on separate sheets, and returned to the county clerk. The returns shall be canvassed in the same manner as the returns of regular elections for county and federal officers. The board shall issue a proclamation, as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five (5) days after the vote is officially announced.

Section 9. The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting for county commissioners.

Section 10. The provisions of this act regarding the referendum shall not apply to resolutions which are required by any other law of the state to be submitted to the voters or the electors or taxpayers of any county.

Section 11. The form of petitions and the proceedings under this act shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws, except as otherwise provided in this act.

APPENDIX B

BILL NO. _____

INTRODUCED BY _____

16-901, 16-2403, 16-2406, 16-2407, 16-2412, 16-3902, 16-3906

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND CHAPTERS 9, 24 AND 39, TITLE 16, R.C.M. 1947, TO PROVIDE FOR OPTIONAL FORMS OF COUNTY GOVERNMENT; TO ADD COUNTY ATTORNEY AND COUNTY CLERK TO THE LIST OF OFFICES THAT CAN BE CONSOLIDATED; AND TO REPEAL SECTION 16-901 AND 16-2407, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Any county in this state may, pursuant to the provisions of this title, the constitution of the state of Montana and any other appropriate provisions of law, adopt any one of the optional forms of county government provided in this title.

Section 2. (a) The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners.

(b) Each county must have a board of county commissioners consisting of from three (3) to five (5) members and all commissioners may be elected for uniform or overlapping terms not exceeding four (4) years.

Section 3. Section 16-2403, R.C.M. 1947, is amended to read as follows:

"16-2403. County officers enumerated. ~~The-officers-of-a county-are:~~ A county may have the following officers:

A treasurer;
A county clerk;
A clerk of the district court;
A sheriff;
A county auditor, except in the sixth, seventh, and eighth class counties;
A county attorney;
A surveyor;
A coroner;
A public administrator;
An assessor;
A county superintendent of common schools;
A board of county commissioners."

Section 4. Section 16-2406, R.C.M. 1947, is amended to read as follows:

"16-2406. County and other officers, when elected or appointed and term of office. There ~~shall~~ may be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of the taxes; provided, that the county treasurer shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons may be elected to the different offices named in this section and they shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified.

The county attorneys, county auditors, and all elective township officers, must be elected at each general election as now provided by law. The elected officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, or six (6) months prior to the appointment of aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order."

Section 5. Section 16-2412, R.C.M. 1947, is amended to read as follows:

"16-2412. Vacancies, how filled. All vacancies in county and township offices, except county commissioner, are filled by appointment made by the county commissioners. Appointees hold until the vacancies are filled by election if elective offices,

and if non-elective offices, appointees serve at the pleasure of the commissioners."

Section 6. The procedure for choosing an optional form of county government under this section is provided for in section 16-3902.

Section 7. Section 16-3902, R.C.M. 1947, is amended to read as follows:

"16-3902. Method of adoption. (a) Upon a petition filed with the board of county commissioners signed by not less than 20 per cent of the whole number of voters who voted at the last general election asking that a referendum be held on the question of ~~adopting-the-county-manager-form-of-government~~ whether one of the optional forms of government provided for in this title shall be established within a county, it shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called it shall be held not more than ninety days nor less than sixty days from the filing of the petition, but not within thirty days of any general election. ~~The question-submitted-shall-be-worded:--"Shall-the-county-manager form-of-government-be-adopted-in-----county?"~~

(b) It shall be the duty of the board of county commissioners to publish a notice of the referendum in a daily paper twice a week for a period of three consecutive weeks, or in case there is no daily paper of wide circulation in the county, then in a weekly paper for four consecutive weeks.

(c) If a majority of the votes cast on the question at the election shall be in favor of the ~~county-manager~~ optional form of government it shall go into effect at a date designated in the petition or resolution. Provided: That no elected official then in office, whose position will no longer be filled by popular election, shall be retired prior to the expiration of his term of office, but that from and after the establishment of such form of government, his duties shall be such duties as are assigned to him by the county manager if a county manager form and if not by the county commissioners.

(d) If a majority of the votes cast on the question at the election shall disapprove the option, the existing form shall be continued and no new referendum may be held during the next two (2) years following the date of such disapproval."

Section 8. Section 16-3906, R.C.M. 1947, is amended to read as follows:

"16-3906. Appointment of manager. (a) ~~The-county-board shall-appoint-a-county-manager-and-fix-his-compensation:--He shall-be-the-administrative-head-of-the-county-government, and shall-devote-his-full-time-to-this-work:--He-shall-be-appointed with-regard-to-merit-only, and-he-need-not-be-a-resident-of-the~~

county-at-the-time-of-his-appointment:--No-member-of-the-county board-shall,-during-the-time-for-which-elected,-be-chosen-manager,-nor-shall-the-managerial-powers-be-given-to-a-person-who-at the-same-time-is-filling-an-elective-office. The board of county commissioners may appoint a county manager who shall be the administrative head of the county government, and shall be responsible for the administration of all departments of the county government which the board of county commissioners has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board of county commissioners the duties and powers of a manager, as hereinafter set forth, and under such circumstances said chairman shall be considered a full-time chairman. Or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(b) The manager shall not be appointed for a definite tenure, but shall be removable at the pleasure of the county board. In case the county board determines to remove the manager, he shall be given, if he so demands, a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the county board prior to the date on which his final removal shall take effect, but pending and during such hearing the county board may suspend him from office, provided that the period of suspension shall be limited to thirty days. The action of the board in suspending or removing the manager shall not be subject to review. In case of the absence or disability of the manager the county board may designate some responsible person to perform the duties of the office.

(c) There may also be an elected county manager form of government in which the government is administered by a single county official, elected at large by the qualified voters of the county. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county manager shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county manager shall be the same as those for the board of county commissioners. The functions, duties and responsibilities of the elected county manager are the same as for the appointed county manager.

APPENDIX C

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE LEGAL VOTERS OF ANY CITY OR TOWN IN THE STATE TO ADOPT A STRONG MAYOR FORM OF MUNICIPAL GOVERNMENT; CREATING A NEW SECTION TO BE NUMBERED 11-802.1."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. There is hereby created a new section to be numbered 11-802.1 as follows:

11-802.1. Strong mayor form of government authorized. The legal voters of any city or town in this state may, in the manner provided in Title 11, chapter 11, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(1) To appoint and remove, without consent of the council, all nonelective officers of the city or town.

(2) To exercise control of all departments and divisions thereof created in this title, or that may be created by the council.

(3) To appoint one (1) or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies. Such administrative assistants shall be solely answerable to the mayor.

(4) To be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in chapter 14 of this title.

(5) To appoint a budget and finance director whose functions shall include the preparation under the direction of the mayor of the annual municipal budget. Such budget and finance director shall be solely answerable to the mayor and shall serve at his pleasure.

If any ordinance duly adopted in accordance with this section is in conflict with sections 11-801 or 11-802 above, the provisions of this section shall prevail.

APPENDIX D

BILL NO. _____

INTRODUCED BY _____

16-2501, 16-2503, 16-2505, 16-2507

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 16-2501, R.C.M. 1947, DELETING REFERENCE TO THE 1889 CONSTITUTION AND PROVIDING FOR CONSOLIDATION OF OFFICES AMONG COUNTIES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 16-2501, R.C.M. 1947, is amended to read as follows:

"16-2501. (4749.1) Consolidation of county offices--petitions--time for filing--contents. At any time not later than seven (7) months before the date of any general election at which any ~~of the~~ county officers ~~enumerated in section five of article XVI of the constitution of this state~~ except county commissioners are to be elected, or at any time for appointed county officers, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of county commissioners of such county.

A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

Said petition shall be addressed to the board or boards of county commissioners of ~~such county~~ the counties affected, shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary, desirable or for the best interests of the county taxpayers ~~of the county~~, and shall be signed by not less than twenty-five per centum (25%) of the qualified electors of such county whose names appear on the registration records thereof, and each person signing such petition shall place after his name his post-office address and voting precinct. In the case of consolidation of offices among several counties, the petition shall be signed by not less than twenty-five per centum (25%) of the qualified electors in each of the counties affected."

Section 2. Section 16-2502.1. Joint Hearings. Nothing herein shall prevent the boards of county commissioners in

counties affected by intercounty consolidation from holding joint hearings provided the proper notice is given in each of the counties affected as set forth in Section 16-2502.

Section 3. Section 16-2503, R.C.M. 1947 is amended to read as follows:

"16-2503. (4749.3) Conduct of hearing. At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any taxpayer of the county affected shall have the right to appear and be heard upon said petition subject however to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing. Within five days after the date set for said hearing the board or boards of county commissioners shall make such order in relation to the consolidation of said offices ~~as-it-shall-deem-proper.~~"

Section 4. Section 16-2505, R.C.M. 1947 is amended to read as follows:

"16-2505. (4749.5) Board's order of consolidation to be published. Whenever a board or boards of county commissioners shall make an order consolidating two or more ~~of-the~~ offices ~~enumerated-in-section-5-of-article-XVI-of-the-constitution-such board-shall-enter~~ such order shall be entered in full on its minutes of proceedings and ~~shall-cause~~ such order to shall be published in a newspaper of general circulation printed and published in said the county or counties affected for a period of six successive weeks next following the date of the making and entry of such order."

Section 5. Section 16-2507, R.C.M. 1947 is amended to read as follows:

"16-2507. (4749.7) Salary and bond of officer upon consolidation. When two or more offices are consolidated under a single officer such officer shall receive as salary an amount to be determined by the board or boards of county commissioners ~~of-the county~~, but which amount must not be more than twenty per cent (20%) higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations; provided that the board or boards of county commissioners shall, ~~at-the-regular-meeting-of-such-board in-June-1942-and-at-the-regular-meeting-of-such-board~~ in June of each fourth year thereafter after adoption of this act, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution; provided further, that such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation; and provided further, that where county offices are consolidated as hereinbefore described, that the officer of the consolidated offices shall have any deputies they may appoint who shall be approved by the board

or boards of county commissioners; and provided further, that
the board or boards of county commissioners shall determine the
number of deputies, stenographers, and clerks the said officers
may appoint."

